

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (2000 State Bar Edition). (This is a GIL).

November 20, 2001

Dear Xxxxx:

This letter is in response to your letter dated September 19, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I contacted the Department of Revenue yesterday regarding this question and they suggested that I write you for a formal opinion.

My wife and I, along with others, reside in a retirement community in CITY, IL., known as NAME. We reside in a manufactured home which was purchased for a sum and on which we paid sales tax, and for which we will receive a title much like a title to a car. Our home sits on a rental site for which we pay a monthly rental.

We decided that we wanted to live next to the golf course and for that privilege we were charged an extra \$10,000.00. NAME insisted that we pay a sales tax on this privilege just as we did on the home and this amounted to over \$700.00. We objected, saying that this was not a legal charge as we were being taxed on a privilege; i.e., that of living next to the golf course. They said that the State of Illinois required this and we assume that all residents of our community who live next to the course, or who will be buying homes in the community to live next to the course, have or will pay the tax.

The person I spoke to yesterday assured me that such a privilege was not taxable. I would like some sort of statement from your office in writing, or at least a copy of the pertinent statute, to this effect. It would also be interesting to know if the corporation that owns the property has been paying the state this 'privilege' tax that it may have illegally collected.

I would like to thank you in advance for your attention to this matter.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (2000 State Bar Edition). The Use Tax Act

imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (2000 State Bar Edition).

If tangible personal property is not transferred, then tax is not owed. If the charge for the privilege of residing near the golf course was separately stated from the price of the manufactured home you purchased, then it is not subject to tax. Illinois does not tax such privileges.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk